

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 17-cr-00191-ERK-1
:
- versus - : U.S. Courthouse
FERNANDO MARTE, : Brooklyn, New York
Defendant :
-----X : May 1, 2018

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE STEVEN L. TISCIONE
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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United States Attorney

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1 THE CLERK: The Honorable Steven L. Tiscione
2 presiding. Criminal Cause for a Guilty Plea, United
3 States v. Marte, docket number 17-cr-191.

4 Counsel, please state your appearances for the
5 record.

6 MR. SRINIVASAN: Good afternoon, your Honor.

7 Karthik Srinivasan for the government.

8 THE COURT: Good afternoon,

9 MR. RICHMAN: Good afternoon, your Honor.

10 Murray Richman for the defense.

11 THE COURT: Good afternoon. Good afternoon,
12 Mr. Marte.

13 THE DEFENDANT: Good afternoon, your Honor.

14 THE COURT: Will you please swear the
15 defendant?

16 THE CLERK: Yes.

17 F E R N A N D O M A R T E ,

18 called as a witness, having been first duly sworn,
19 was examined Please be seated and I would ask counsel
20 and testified as follows:

21 THE COURT: Mr. Marte, do you speak and
22 understand English?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You understand that this is Judge
25 Korman's case. He is the judge that will sentence you

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1 and make the ultimate decision as to whether or not to
2 accept your guilty plea. If you wish, you have the
3 absolute right to have Judge Korman hear your plea and if
4 you choose to do that, there will be no prejudice to you.

5 Alternatively, if you wish, I can listen to
6 your plea. A transcript will be made and Judge Korman
7 will review the transcript in deciding whether to accept
8 your plea and in connection with your sentencing.

9 Do you wish to give up your right to have Judge
10 Korman listen to your plea and instead proceed here
11 before me today?

12 THE DEFENDANT: Yes, I do, your Honor.

13 THE COURT: Okay. Do you make this decision
14 voluntarily and of your own free will?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have any threats or promises been
17 made to you to induce you to have me take your plea?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: All right. Is this your signature
20 on the "Consent to Have a Plea Taken Before a Magistrate
21 Judge?" Is that your signature?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Okay.

24 THE COURT: Now, Mr. Marte, before I accept
25 your guilty plea, I must ask you a number of questions to

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1 assure that it is a valid plea. If you do not understand
2 any of my questions, please let me know and I'll reword
3 them or explain them to the best of my ability.

4 Okay?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Do you understand that
7 you have the right to be represented by counsel at trial
8 and at every other stage of the proceedings including
9 this one?

10 THE DEFENDANT: I understand.

11 THE COURT: Do you understand that if you
12 cannot afford counsel, the Court may appoint counsel for
13 you?

14 THE DEFENDANT: I understand.

15 THE COURT: All right. Mr. Richman, who is
16 sitting next to you is your attorney. If you wish to
17 consult with him at any time during the proceeding,
18 please let me know and I will give you as much time as
19 you need, okay?

20 THE DEFENDANT: Okay, thank you.

21 THE COURT: Now you've sworn to tell the truth.
22 That means that if you answer any of my questions
23 falsely, your answers later may be used against you in a
24 separate proceeding for perjury or for making a false
25 statement.

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1 Do you understand that?

2 THE DEFENDANT: I understand.

3 THE COURT: What is your full name, sir?

4 THE DEFENDANT: Fernando Marte.

5 THE COURT: How old are you?

6 THE DEFENDANT: I am 28 years old.

7 THE COURT: What's the --

8 THE DEFENDANT: Or 29, sorry.

9 THE COURT: 29, okay. What's the highest grade
10 that you completed in school?

11 THE DEFENDANT: I have a couple of semesters in
12 college.

13 THE COURT: Okay. And are you presently or
14 have you recently been under the care of a physician?

15 THE DEFENDANT: No.

16 THE COURT: Are you presently or have you
17 recently been under the care of a psychiatrist?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Have you ever been hospitalized or
20 treated for any mental illness?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Have you ever been hospitalized or
23 treated for addiction to drugs or alcohol?

24 THE DEFENDANT: No, sir.

25 THE COURT: In the past 24 hours, have you

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1 consumed any narcotics?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: In the past 24 hours, have you
4 taken any prescription medications?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: And in the past 24 hours, have you
7 consumed any alcoholic beverages?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Is your mind clear?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand what's going on
12 here today?

13 THE DEFENDANT: I understood everything.

14 THE COURT: Counsel, have you discussed the
15 matter of pleading guilty with your client?

16 MR. RICHMAN: I have.

17 THE COURT: And in your opinion, is he capable
18 of understanding the nature of these proceedings?

19 MR. RICHMAN: I believe he is.

20 THE COURT: In your opinion, does he understand
21 the rights he'll be waiving by pleading guilty?

22 MR. RICHMAN: He does, your Honor.

23 THE COURT: Do you have any doubt as to the
24 defendant's competence to plead at this time?

25 MR. RICHMAN: No doubt whatsoever.

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1 THE COURT: Have you advised him of the maximum
2 sentence and fine that can be imposed?

3 THE DEFENDANT: I have.

4 THE COURT: Have you discussed with him the
5 operation of the advisory sentencing guidelines?

6 MR. RICHMAN: Yes.

7 THE COURT: Mr. Marte, have you had a
8 sufficient opportunity to discuss this case with your
9 attorney?

10 THE DEFENDANT: I have, your Honor.

11 THE COURT: Okay.

12 THE COURT: And are you fully satisfied with
13 the representation and advice given to you in this case
14 by Mr. Richman?

15 THE DEFENDANT: I am.

16 THE COURT: Have you received a copy of the
17 superseding information that the government plans to file
18 in this case?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: And specifically, there's two
21 counts. Count 1 is conspiracy to import cocaine. Count
22 2 is soliciting bribes by a public official.

23 Have you reviewed those two charges and
24 discussed them with your attorney?

25 THE DEFENDANT: I have, your Honor.

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1 THE COURT: Do you understand the charges?

2 THE DEFENDANT: I do.

3 THE COURT: I understand you're pleading guilty
4 pursuant to a written agreement with the government,
5 which I have marked before me as Court Exhibit 1. Before
6 I go into the agreement itself, I need to advise you of
7 all of the rights that you'll be waiving if you choose to
8 plead guilty.

9 The most important thing you must understand is
10 that you do not have to plead guilty even if you are
11 guilty. Under our legal system, the prosecutor has the
12 burden of proving the defendant's guilt beyond a
13 reasonable doubt and if the prosecutor cannot meet that
14 burden, the jury has the duty to find the defendant not
15 guilty.

16 Do you understand that?

17 THE DEFENDANT: I understand.

18 THE COURT: If you plead not guilty, then under
19 the Constitution and laws of the United States, you are
20 entitled to a speedy and public trial by jury with the
21 assistance of counsel on all of the charges contained in
22 the information.

23 Do you understand that?

24 THE DEFENDANT: I understand.

25 THE COURT: At the trial, you would be presumed

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1 to be innocent. You would not have to prove that you
2 were innocent. It's always the government's burden to
3 overcome that presumption and prove you guilty by
4 competence evidence and beyond a reasonable doubt.

5 Do you understand that?

6 THE DEFENDANT: I understand.

7 THE COURT: In the course of the trial, the
8 witnesses for the government would have to come to court
9 and testify in your presence. And your counsel would
10 have the right to cross-examine the witnesses for the
11 government, to object to evidence offered by the
12 government, to offer evidence on your behalf. Your
13 attorney would also have the right to subpoena or compel
14 witnesses to come to court and testify.

15 Do you understand that?

16 THE DEFENDANT: I understand.

17 THE COURT: At trial, you would have the right
18 to testify on your own behalf if you chose to do so.
19 However, you're not required to testify. Under the
20 Constitution and laws of the United States, a defendant
21 in a criminal case cannot be forced to take the witness
22 stand and say anything that could be used against them to
23 show that they are guilty of the crimes with which they
24 are charged.

25 If you decided not to testify, the Court would

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1 instruct the jury that they could not hold that against
2 you. That's called your right against self-
3 incrimination. By pleading guilty, however, you will be
4 admitting your guilt and giving up your right against
5 self-incrimination.

6 Do you understand that?

7 THE DEFENDANT: I understand that.

8 THE COURT: If you plead guilty, I must ask you
9 questions about what you did in order to satisfy myself
10 that you are, in fact, guilty of the crimes to which you
11 are pleading guilty. And you'll have to answer my
12 questions truthfully and acknowledge your guilt. In
13 other words, it's not simply enough to say you're guilty,
14 you must also tell me what it is that you did that makes
15 you guilty of the particular charges to which you're
16 pleading guilty.

17 Do you understand that?

18 THE DEFENDANT: I understand.

19 THE COURT: If you plead guilty and the
20 District Court accepts your plea, you'll be giving up
21 your constitutional right to a trial and all of the other
22 rights that I have just described. There will be no
23 further trial of any kind. The Court will simply enter a
24 judgment of guilty based on your plea.

25 Do you understand that?

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1 THE DEFENDANT: I understand.

2 THE COURT: Now if you decided to go to trial
3 and the jury found you guilty, you could appeal both the
4 verdict and the sentence. By pleading guilty and
5 entering into the agreement that's before the Court,
6 you'll have waived or given up your right to appeal or
7 collaterally attack all or part of the sentence that is
8 imposed.

9 Specifically, the agreement that you've entered
10 into with the government, provides that you have agreed
11 not to file an appeal or otherwise challenge your
12 sentence or your conviction in the event that the Court
13 imposes a term of imprisonment of 151 months or less.

14 Do you understand that?

15 THE DEFENDANT: Understood.

16 THE COURT: Okay. Are you willing to give up
17 your right to a trial and the other rights that I have
18 just discussed?

19 THE DEFENDANT: I am, your Honor.

20 THE COURT: I am looking now at the agreement,
21 which is a twelve-page agreement. It appears to have your
22 signature, your attorney's signature and the signatures
23 of the government attorneys on the last page.

24 Is that your signature on the last page of the
25 agreement?

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1 THE DEFENDANT: It is, your Honor.

2 THE COURT: Have you completely gone over this
3 agreement with your attorney?

4 THE DEFENDANT: I have, your Honor.

5 THE COURT: And do you understand all of the
6 provisions contained in the agreement?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: Does the written agreement
9 accurately represent the entire understanding that you
10 have with the government?

11 THE DEFENDANT: It does, your Honor.

12 THE COURT: Counsel, have you read and reviewed
13 this with your client?

14 MR. RICHMAN: I have, your Honor.

15 THE COURT: And does it reflect your entire
16 understanding of the agreement your client has entered
17 into with the government?

18 MR. RICHMAN: It does.

19 THE COURT: Now I wish to discuss with you the
20 sentencing scheme that's applicable here. The first
21 statute that you're accused of violating for conspiracy
22 to import cocaine has a maximum term of life and a
23 minimum term of imprisonment of ten years. There's also
24 a minimum supervised release term of five years and a
25 maximum supervised release term of life to follow any

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1 term of imprisonment.

2 If you violate any condition of release, you
3 could be sentenced to up to five years without credit for
4 pre-release imprisonment or time previously served on
5 post-release supervision.

6 There's also a maximum fine of \$10 million, a
7 mandatory \$100 special assessment and there's criminal
8 forfeiture provisions that are described in paragraphs 6
9 through 13 of the agreement, which includes the entry of
10 a forfeiture money judgment in the amount of \$75,000 and
11 that's the bulk of it.

12 Do you understand that?

13 THE DEFENDANT: I do, your Honor.

14 THE COURT: Okay. Count 2 has a maximum term
15 of imprisonment of 15 years and that's 18 USC Section
16 201. There is a minimum term of imprisonment -- there is
17 no minimum term of imprisonment. There's a maximum
18 supervised release term of three years to follow any term
19 of imprisonment and if you violate a condition of
20 release, you could be sentenced to up to two years
21 without credit for pre-release imprisonment or time
22 previously served on post-release supervision.

23 There's a maximum fine of \$250,000 or twice the
24 gross gain or twice the gross loss. There's a mandatory
25 \$100 special assessment and the same criminal forfeiture

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1 provisions, as well.

2 Do you understand that?

3 THE DEFENDANT: I understand, your Honor.

4 THE COURT: It's not actually spelled out in
5 the agreement but I assume that the term of imprisonment
6 for these two counts can be imposed consecutively. It's
7 within the discretion of the Court.

8 THE DEFENDANT: I understand.

9 THE COURT: You understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. All right.

12 THE COURT: Are you a citizen of the United
13 States?

14 THE DEFENDANT: I am, your Honor.

15 THE COURT: Okay. Just in an abundance of
16 caution, I will advise you that if you are not a citizen
17 of the United States, your conviction for these offenses,
18 particularly the cocaine offense, would result in your
19 being removed or deported from the United States.

20 Do you understand that?

21 THE DEFENDANT: I understand, your Honor.

22 THE COURT: Okay. And understanding that, do
23 you still wish to plead guilty?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: Okay. Now Judge Korman does not

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1 have complete discretion to impose a sentence here. As a
2 first step, the Court must consider the advisory
3 sentencing guidelines issued by the United States
4 Sentencing Commission in determining what is a reasonable
5 sentence.

6 As a second step, the Court must consider
7 whether there are any factors present that would allow
8 the Court to depart from the advisory guidelines either
9 upwardly or downwardly.

10 In addition, the Court must consider the
11 factors set forth in 18 USC Section 3553(a) against all
12 of the facts and circumstances of the case, and it may be
13 that what is called a nonguideline sentence maybe
14 appropriate.

15 The bottom line is that until the day of
16 sentencing when there's a presentence report, the judge
17 hears from you, your attorney, and the attorneys for the
18 government, you cannot know with certainty what the
19 guidelines will be, or whether there will be grounds to
20 depart from them or whether the Court will impose a
21 nonguideline sentence.

22 Do you understand that?

23 THE DEFENDANT: I understand, your Honor.

24 THE COURT: Nevertheless, I ask the attorneys
25 to give their best estimate of what the guidelines are

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1 likely to say based upon the facts available to them at
2 this time, but please keep in mind that it is a guess
3 that can be wrong and if the estimate is wrong, it's not
4 binding on the government, probation department or the
5 Court. And you won't be able to use that as a basis to
6 withdraw your guilty plea.

7 Do you understand that?

8 THE DEFENDANT: I understand, your Honor.

9 THE COURT: What's the government's estimate of
10 the guideline range?

11 MR. SRINIVASAN: Your Honor, our preliminary
12 estimate is 121 to 151 months, assuming that the
13 defendant is in criminal history category one.

14 THE COURT: And Mr. Richman, do you have any
15 different calculation at this time?

16 MR. RICHMAN: Those are my calculations, as
17 well, your Honor, subject to 3553(a) and other factors.

18 THE COURT: Okay. You understand that's just
19 an estimate and they could be wrong?

20 THE DEFENDANT: I understand, your Honor.

21 THE COURT: Okay. Do you have any questions
22 you would like to ask me about the charges, your rights
23 or anything else related to this matter?

24 THE DEFENDANT: Not at all, your Honor.

25 THE COURT: Counsel, do you know of any reason

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1 why the defendant should not plead guilty?

2 MR. RICHMAN: I do not.

3 THE COURT: Are you aware of any viable legal
4 defenses to the charges?

5 MR. RICHMAN: I do not, sir.

6 THE COURT: Mr. Marte, are you ready to plead
7 or do you wish to consult with your attorney before you
8 do so?

9 THE DEFENDANT: I'm ready, your Honor.

10 THE COURT: Okay. What is your plea to Count
11 1, conspiracy to import cocaine, guilty or not guilty?

12 THE DEFENDANT: Guilty, your Honor.

13 THE COURT: And what is your plea to Count 2,
14 soliciting bribes by a public official, guilty or not
15 guilty?

16 THE DEFENDANT: Guilty, your Honor.

17 THE COURT: Are you pleading guilty voluntarily
18 and of your own free will?

19 THE DEFENDANT: I am, your Honor.

20 THE COURT: Has anyone threatened or forced you
21 to plead guilty?

22 THE DEFENDANT: Not at all, your Honor.

23 THE COURT: Other than the promises contained
24 in the written agreement, has anyone made any other
25 promises to you to induce you to plead guilty?

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1 THE DEFENDANT: No promises, your Honor.

2 THE COURT: Has anyone made any promise to you
3 as to what your final sentence will be?

4 THE DEFENDANT: Not at all.

5 THE COURT: Okay. Did you as charged in Count
6 1 of the information, between January of 2016, and
7 February 2016, knowingly and intentionally conspire to
8 import cocaine into the United States from a place
9 outside thereof?

10 MR. RICHMAN: Your Honor --

11 MR. SRINIVASAN: Your Honor, that's 2017.

12 THE COURT: Sorry, January 2016 and February
13 2017?

14 THE DEFENDANT: I did, your Honor.

15 THE COURT: Okay. And did you as charged in
16 Count 2 between January 2016 and February 2017, being a
17 public official, knowingly and intentionally, and
18 corruptly demand, seek, receive, accept and agree to
19 receive one or more things of value in return for being
20 induced to do, and omit to do things in violation of your
21 official duty?

22 THE DEFENDANT: I did, your Honor.

23 THE COURT: Okay. Can you tell me what you did
24 in your own words that makes you guilty of those
25 offenses?

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1 MR. RICHMAN: May I have a moment, your Honor?

2 THE COURT: Yes, of course.

3 (Counsel and client confer)

4 THE DEFENDANT: Your Honor, I permitted a
5 person to come by checkpoints in the airport with a bag
6 that contained narcotics and I received cash for it.

7 THE COURT: Okay. So what position did you
8 hold?

9 THE DEFENDANT: I was just an immigration
10 officer.

11 THE COURT: Okay. So you were an immigration
12 officer and you allowed somebody to bring a bag of
13 cocaine into the United States?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Okay. And that was in violation of
16 your duties as an immigration officer?

17 THE DEFENDANT: Correct.

18 THE COURT: And you did that in exchange for
19 cash?

20 THE DEFENDANT: Correct.

21 THE COURT: Okay. And what airport are we
22 talking about?

23 THE DEFENDANT: I worked at John F. Kennedy.

24 THE COURT: JFK, okay. And this was during the
25 time period that's listed in the information?

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1 THE DEFENDANT: Correct, your Honor.

2 THE COURT: Okay. And I believe that the
3 indictment has a drug weight of at least five kilograms
4 or more of cocaine.

5 Do you understand that?

6 THE DEFENDANT: I understand, your Honor.

7 THE COURT: Okay. And so you acknowledge that
8 the amount of cocaine that came in through your actions
9 was at least five kilograms or more?

10 THE DEFENDANT: I understand your Honor, yes.

11 THE COURT: Yes. Okay. Is that allocution
12 sufficient to the government?

13 MR. SRINIVASAN: Yes, your Honor.

14 THE COURT: Okay. All right. Based on the
15 information given to me, I find that the defendant is
16 acting voluntarily, that he understands his rights and
17 the consequences of his plea and that there is a factual
18 basis for the plea.

19 And I will therefore recommend to Judge Korman
20 that he accept the plea of guilty to Count 1 and Count 2
21 of the superseding indictment.

22 There's a tentative sentencing date of
23 September 12th at 2:30 p.m. I assume Mr. Richman, you
24 would like to be present for the probation interview.

25 MR. RICHMAN: I would, yes, your Honor.

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1 THE COURT: Yes, okay. Is there anything
2 further from either side?

3 MR. RICHMAN: Nothing, sir.

4 MR. SRINIVASAN: Your Honor, can I have one
5 minute?

6 THE COURT: Yes, sure.

7 MR. SRINIVASAN: Thank you, your Honor.
8 Nothing further.

9 THE COURT: All right. Thank you.

10 MR. RICHMAN: Thank you, your Honor.

11 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 15th day of June, 2018.


Linda Ferrara

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